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Consideration of reports: reports submitted by States parties in accordance with articles 16 and 17 of the Covenant

List of issues in relation to the second periodic report of China (E/C.12/CHN/2), including Hong Kong, China (E/C.12/CHN-HKG/3) and Macao, China (E/C.12/CHN-MAC/2)*

Addendum

Replies of Hong Kong, China to the list of issues**

[Date received: 19 March 2014]

* The list of issues (E/C.12/WG/CHN/Q/2) comprises three parts: part one (paras. 1–39) relating to China; part two (paras. 40–59) relating to Hong Kong, China; and part three (paras. 60–70) relating to Macao, China.

** The present document is being issued without formal editing.

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Part Two: The Hong Kong Special Administrative Region (HKSAR) Government's response to the list of issues raised by the Committee on Economic, Social and Cultural Rights in relation to the second periodic report of the People's Republic of China

IV. Issues relating to the general provisions of the Covenant (arts. 1-5)

Article 2 paragraph 2 – Non-discrimination

Question 40: Please provide information on steps taken to review and repeal the "two-week rule" and to address discrimination and abuse against migrant domestic workers as a consequence of this rule

1. The "two-week rule" is essential for maintaining effective immigration control. It helps to prevent frequent job-hopping and foreign domestic helpers (FDHs) working illegally after contract termination. Such an arrangement is to allow sufficient time for FDHs to prepare for their departure; it is not to facilitate FDHs to find new employers.

2. The policy does not preclude FDHs from working in the HKSAR again after returning to their places of origin. Furthermore, the cost of the return flight is fully borne by the FDH employer as stipulated under the "standard employment contract" for employment of FDHs.

3. Appropriate flexibility is allowed under the existing policy. Under exceptional circumstances where the employer is unable to continue with the contract, due to, for example, the employer's migration, external transfer, death or economic difficulty, or where there is evidence showing that the FDH has been abused or exploited, FDHs may apply for change of employment in the HKSAR without the need of first returning to their places of origin.

Question 41: Please clarify whether steps are foreseen to introduce legislation prohibiting discrimination on the grounds of sexual orientation and gender identity, and provide information on steps taken to prevent and combat discrimination based on such grounds

4. Whether legislation prohibiting discrimination on the ground of sexual orientation and gender identity should be introduced is a highly controversial and sensitive issue in the HKSAR which must be tackled cautiously. Some are in support from the perspective of equal opportunity, while others are concerned that it may deal a blow to family, religion and education. The HKSAR Government will continue to listen carefully to different views from various sectors in the community.

5. Although there is currently no plan to introduce legislation, the HKSAR Government has been promoting equal opportunities on grounds of sexual orientation and gender identity through public education and publicity. These include:

(a) Implementing the Equal Opportunities (Sexual Orientation) Funding Scheme which provides funding support to worthwhile community projects that aim to promote equal opportunities on grounds of sexual orientation and gender identity;

(b) Promoting the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation both within and outside the government; and

(c) Producing and broadcasting Announcement in the Public Interest (API) on television and radio, and launching advertising campaigns on different media to promote the message of equal opportunities for sexual minorities.

6. To better address the issue, the HKSAR Government established the Advisory Group on Eliminating Discrimination against Sexual Minorities (Advisory Group) in June 2013 to provide advice on matters relating to concerns about discrimination faced by sexual minorities in the HKSAR, notably the aspects and extent of discrimination faced by sexual minorities in the HKSAR, and the strategies and measures to tackle the problems identified, with a view to eliminating discrimination and nurturing a culture of diversity, tolerance and mutual respect in the community. The Advisory Group comprises different stakeholders including a number of sexual minorities. The Advisory Group is embarking on a focussed study on discrimination experienced by sexual minorities, the findings of which could then form an informed basis for further consideration of the way forward.

7. In January 2014, the HKSAR Government set up a high-level inter-departmental working group, chaired by the Secretary for Justice, with members comprising representatives of relevant policy bureaux and the legal field, to undertake a study on various aspects of gender recognition in respect of transsexual persons, amongst which it will research on issues relating to discrimination on the ground of a person's acquired gender or on the ground that the victim is a transsexual person. The working group will consult widely in the course of its work, and will make recommendations to the HKSAR Government.

Question 42: Please inform the Committee whether measures, legislative or otherwise, have been envisaged to extend coverage of the Race Discrimination Ordinance to all public functions, including the immigration service, police force, foreign domestic workers, as well as to all grounds of discrimination, including nationality, citizenship and residence

8. Under the Race Discrimination Ordinance (RDO) (Cap. 602), "race", in relation to a person, means the race, colour, descent or national or ethnic origin of the person. For clarity and certainty in law, the RDO provides that an act done on the ground of a person's nationality, citizenship, resident status or the length of residence in the HKSAR does not constitute an act done on the ground of "race". This does not narrow the definition of "race" in the RDO. Although there is an exception in relation to "any immigration legislation governing entry into, stay in and departure from Hong Kong" in section 55 of the Ordinance because of the considerations set out in the HKSAR Report on Article 2, the RDO applies equally to all persons in the HKSAR in the specified areas and protects them from discrimination on the ground of race irrespective of their nationality or immigration status.

9. The Hong Kong Bill of Rights Ordinance (HKBORO) (Cap. 383) requires the HKSAR Government not to engage in race-discriminatory acts in performing its functions. Apart from the legal remedies available under administrative law and the HKBORO, there is a combined framework which deals with complaints against Government departments, and it includes the Equal Opportunities Commission (EOC), the Ombudsman, the Independent Police Complaints Council, each Government bureau's and department's complaint channels, and the Legislative Council. These safeguards have been operating effectively. Moreover, section 3 of the RDO expressly provides that the Ordinance "binds the Government". The RDO prohibits racial discrimination by both public and private sectors in many specified areas such as employment, education and the provision of goods, services and facilities.

10. In 2010, the HKSAR Government issued the Administrative Guidelines on Promotion of Racial Equality (the Guidelines) to provide general guidance to relevant Government bureaux and departments and public authorities to promote racial equality and

ensure equal access by ethnic minorities to key public services, and to take this into account in their formulation, implementation and review of relevant policies and measures. The key public services covered by the Guidelines are particularly relevant to meeting the special needs of ethnic minorities and facilitating their integration into the community, namely, medical, education, vocational training, employment and major community services. In 2010, the Guidelines applied to 14 departments. As from 2013, they apply to 8 additional departments, including the Immigration Department and the Hong Kong Police.

11. As stated in the 2014 Policy Address, the HKSAR Government will implement a number of measures to strengthen education support and employment services for ethnic minorities and to help them integrate into the community. Highlights of these measures to be implemented by relevant Bureaux and Departments are set out in the annex.

Article 3 – Equal rights of men and women

Question 43: Please provide information on the impact of steps taken to ensure the principle of equal pay for work of equal value, and provide updated information on the current wage disparities between men and women

12. Since its establishment in 1996, the EOC has worked steadily to advance the Equal Pay for Work of Equal Value (EPEV) principle by including it in the Code of Practice on Employment issued under the Sex Discrimination Ordinance (SDO) (Cap. 480). On 23 November 2006, the EOC released its Study on EPEV, a long term project undertaken by the EOC to advance the principle of EPEV in the HKSAR. The study on certain selected jobs in the civil service and the Hospital Authority revealed no systemic problem of pay inequity on the basis of gender.

13. Subsequently, in December 2008, the EOC developed a set of clear guidelines to employers (the Guide) to continuously strengthen the public understanding on the concept of equal pay, to address the issue of pay disparity between the two genders and to conduct investigation into alleged contraventions. The Guide was developed after making reference to overseas practices and jurisprudence, as well as the pay practice of local large corporations. Sharing sessions were organised to obtain feedback from stakeholder groups such as women's groups and human resources practitioners before finalising the Guide.

14. Taking into account the scale of operation of small businesses which may not have the resources to develop a structured and sophisticated pay system as in the case of large corporations, an additional Easy Read Guide targeting these employers is made available for their reference. The Easy Read Guide uses jobs in a local café and a small trading company as an example, with simple illustrations and key notes, to explain that EPEV can be made easy for small business operations.

15. The guides are not only made available at the EOC's office, but are also sent to major employers' associations, trade unions and members of the EO Club set up by the EOC. The whole series of publications had been uploaded to EOC's website for easy access by the public. Talks were arranged for employers and women groups and other stakeholders on the subject of EPEV. The essence of EPEV principles and practices has been incorporated in the EOC's regular training for different stakeholders and the general public. The EOC would continue to promote EPEV as part of its overall public education effort on the concept of equal opportunities for all.

16. The EOC has not received any related complaints since launch of the EPEV guides and the aforementioned promotional and training work. We believe the work done has made an impact on the community.

17. In 2012, the median monthly employment earnings of employed persons by sex in the HKSAR are HK$14,000 (for male) and HK$10,000 (for female). It is also worth noting that the HKSAR Government, the Hospital Authority and government-subvented schools in the HKSAR, consisting of about 264 000 people (i.e. about 7% of the total working population), are following pay policy that is consistent with the principle of EPEV. Furthermore, the SDO expressly prohibits sex discrimination in relation to employment terms.

V. Issues relating to the specific provisions of the Covenant (arts. 6-15)

Article 6 – The right to work

Question 44: Please clarify whether refugees have access to the labour market and to tertiary or vocational training

18. According to the reservation made to Article 6 of the Covenant, the said article does not preclude the formulation of regulations by the HKSAR for employment restrictions, based on place of birth or residence qualifications, for the purpose of safeguarding the employment opportunities of local workers in the HKSAR.

19. Persons claiming non-refoulement protection (including torture claims made under the Immigration Ordinance (IO) (Cap. 115) and asylum claims lodged with the United Nations High Commissioner for Refugees (UNHCR) Sub-Office at HKSAR, who have no right or permission to enter or remain in the HKSAR, may not lawfully take employment under the IO. A person who contravenes such restriction commits an offence under the IO.

20. That notwithstanding, in regard to persons whose non-refoulement claims have been substantiated and mandated refugees, the Director of Immigration may, upon application, consider each case on its own merits and take into account any strong compassionate or humanitarian reasons or other special extenuating circumstances in deciding whether, as a matter of discretion, to grant them permission to take employment on an exceptional basis. For persons who have been granted such permission, the above mentioned restriction under the IO does not apply during the validity of the permission granted.

21. At present, there is no mandatory provision of post-secondary education or vocational training to the general public in the HKSAR. Admission to post-secondary programmes is on a merit basis and administered by the institutions. With regard to access to vocational training, since refugees will only be granted permission to take up employment on an exceptional basis and that such permission is not granted with a view to long-term employment in the HKSAR, the question of their receiving vocational training, which mainly serves to prepare a person for employment, does not normally arise.

Article 7 – The right to just and favourable conditions of work

Question 45: Please provide information on legislation regulating standard working hours, statutory overtime pay and rest breaks, and protecting against unfair dismissal

Legislation regulating standard working hours, statutory overtime pay and rest breaks

22. In HKSAR, working hours of certain categories of employees including children (under the age of 15) and young persons (aged 15 or above and below 18) working in

industrial undertakings are regulated by law. For other employees, working hours, overtime pay and rest breaks, like other terms of employment, are determined by employment contracts but subject to the relevant statutory requirements.

23. Acknowledging concerns of the community on the situation of working hours in the HKSAR, the HKSAR Government completed a policy study on standard working hours (SWH) and published a study report in November 2012. The report provides a solid and objective basis for promoting further deliberation of this important subject in the community.

24. To take forward the report, the HKSAR Government in April 2013 appointed an SWH Committee, comprising members from the business, labour, academic and community sectors as well as the HKSAR Government, for a term of three years.

25. Working hours issues carry widespread and significant implications for the HKSAR's overall labour market, manpower demand, employment relations, work culture, business environment, economic development and business competitiveness. The SWH Committee strives to foster an informed and in-depth discussion with the community with a view to building consensus and assisting the HKSAR Government to identify the way forward.

Legislation protecting employees against unfair dismissal

26. Under the Employment Ordinance (EO) (Cap. 57), an employee who is unreasonably dismissed may claim remedies against his employer. The Labour Tribunal (LT) may make an order for reinstatement or re-engagement (RI/RE) of the employee subject to the mutual consent of the employer and the employee, or make an award of terminal payments to the employee. If the employee making the claim has been unreasonably and unlawfully dismissed, LT may make an award of compensation, on top of terminal payments, when no RI/RE order is made.

27. Under the EO, it is a criminal offence for an employer not to pay compensation or terminal payments falling within the scope of statutory entitlements.

28. To strengthen the protection for employees, the HKSAR Government is working on a Bill to empower LT to make a compulsory order for RI/RE of an employee in cases of unreasonable and unlawful dismissal without the need to first secure the agreement of the employer, if LT considers making such an order appropriate and the employer's compliance with it reasonably practicable.

Question 46: Please provide information on steps taken to ensure that migrant domestic workers do not receive a wage below the minimum allowable wage currently in place for this category of workers. Please clarify whether the Minimum Wage Ordinance will be amended to also cover live-in migrant domestic workers. Please also specify which steps are taken to ensure that migrant domestic workers are granted weekly rest days in accordance with section 17 of the Employment Ordinance

Steps taken to ensure migrant domestic workers do not receive a wage below the minimum allowable wage and are granted weekly rest days

29. The HKSAR Government attaches great importance to protecting the rights of FDHs in the HKSAR. Like local workers, FDHs enjoy equal and full protection and entitlements under the EO, including wage payment, maternity protection, rest days, statutory holidays, annual leave, long service payment, etc.

30. Under the EO, FDHs are entitled to at least one rest day, which shall be a continuous period of not less than 24 hours to abstain from working for his employer, in every period

of seven days. An employer who without reasonable excuse fails to grant rest days to his employee, or compels his employee to work on rest days, is liable to prosecution and, upon conviction, to a fine of HK$50,000.

31. Apart from statutory protection, FDHs are further protected by a Government prescribed Standard Employment Contract (SEC), under which they are entitled to Minimum Allowable Wage (MAW), free food (or food allowance in lieu), free passage to/from their places of domicile, free medical treatment and free accommodation with reasonable privacy.

32. The MAW for FDHs has been prescribed by the HKSAR Government since the early 1970s to protect them from exploitation, and is subject to regular reviews. Employers shall not pay a wage lower than the MAW stipulated in the SEC signed with the FDH. An employer who wilfully and without reasonable excuse underpays an FDH is liable to prosecution and, upon conviction, to a fine of HK$350,000 and to imprisonment for 3 years.

33. Same as their local counterparts, FDHs have full access to the Labour Department (LD)'s free services, including consultation and conciliation service to resolve disputes with their employers. If no settlement could be reached by conciliation, the cases will be referred to the Minor Employment Claims Adjudication Board or the Labour Tribunal for adjudication.

34. LD will not tolerate abuse of FDHs and takes rigorous enforcement action against labour offences. Any complaints involving suspected underpayment of wages or non-granting of rest day will be investigated promptly. Prosecution against the offending employer will be instituted if there is sufficient evidence.

35. To ensure FDHs are aware of their rights and employers are aware of their obligations and consequences of breaching the law, LD undertakes many promotional activities throughout the year. For details of these activities, please refer to paragraphs 52.14–52.16.

Whether the Minimum Wage Ordinance will be amended to cover live-in migrant domestic workers

36. All live-in domestic workers, irrespective of their gender, ethnicity and nationality (i.e. local or migrant), are exempted from the Minimum Wage Ordinance (Cap. 608). In arriving at the exemption which has been the consensus when legislating for Statutory Minimum Wage (SMW), the HKSAR Government has considered all relevant circumstances and views of stakeholders. One of the major considerations for the exemption is the distinctive working pattern of live-in domestic workers, i.e. residing in the employer's home, working and living in the same place, which renders calculating and recording of working hours difficult, when SMW is set on an hourly basis. The exemption of live-in domestic workers also reflects the provision of in-kind benefits arising from them living in the household of their employers free of charge. Such in-kind benefits include provision of free accommodation and usually free food by the employers, as well as savings in transport cost. We have no plan to remove the exemption.

Question 47: Please provide information on steps taken to ensure that persons with disabilities do not receive a lower salary for equal work, compared to persons without disabilities.

37. Through the EOC's public education and publicity initiatives, the principle of EPEV is constantly promoted. Regular talks and training are provided for organizations in both private and public sectors, including employers' groups, labour unions and non-governmental organizations (NGOs) serving persons with disabilities. These efforts have

incorporated the essence of EPEV principles and practices. Besides, the EOC has published a Code of Practice on Employment under the Disability Discrimination Ordinance (DDO) (Cap. 487), which prohibits discriminatory behaviour against persons with disabilities in various aspects including employment. The Code provides detailed explanation on the key legal concepts in the DDO and suggests good practice for employers and employees to better understand their respective rights and responsibilities under the Ordinance. It was last updated in 2011 and contains a section on "equal pay for equal work and equal pay for work of equal value".

38. Employees with disabilities may lodge a complaint with the EOC if they consider that they have been discriminated against by employers in the terms of employment offered or afforded to them. The EOC will investigate into the matter and endeavour to conciliate where necessary. These employees may also bring civil proceedings against the employers pursuant to section 72 of the DDO. If a genuine case of abuse is established, the EOC may grant assistance in instituting proceedings against the employer.

Article 8 – The right to form and join trade unions and right to strike

Question 48: Please provide updated information on the protection against dismissal for workers who engage in trade union activities

39. Section 21B(2)(b) of the EO provides that an employer shall not dismiss, penalize or discriminate against an employee by reason of his exercising trade union rights. An employer who contravenes the relevant provisions commits an offence and is liable on conviction to a fine of HK$100,000. Moreover, an employee who is dismissed due to his exercising union rights within a period of 12 months immediately preceding such dismissal may claim for remedies under the EO against the employer. The remedies include an order for reinstatement or re-engagement, or an award of terminal payments and/or an award of compensation not exceeding HK$150,000. The EO also explicitly prohibits an employer from summarily dismissing without notice or wages in lieu of notice an employee who takes part in a strike.

40. To strengthen the protection for employees, the HKSAR Government is working on a Bill as set out in Item 45 above to empower the Labour Tribunal to make a compulsory order of reinstatement or re-engagement without the need to first secure the consent of the employer if an employee is found to have been dismissed unreasonably and unlawfully. This Bill, if enacted, will supplement existing law and provide additional protection to employees who are discriminated because of their trade union membership and activities.

Article 9 – The right to social security

Question 49: Please provide information on the practical reasons for setting the residency rule at seven (7) years as one of the application criteria for the Comprehensive Social Security Assistance scheme, and explain whether this period may be reduced for particular groups at risk of living in poverty, rather than being based on an individual assessment of each particular case

41. The residence requirement for the Comprehensive Social Security Assistance (CSSA) Scheme has been lowered from seven years to one year. In cases of genuine hardship, the Director of Social Welfare may exercise discretion to waive the one-year residence requirement for the CSSA.

42. In addition, we continue to exempt HKSAR residents aged below 18 from any residence requirement.

Question 50: Please provide information on steps taken to ensure that persons with disabilities have access to their right to social security

43. The CSSA Scheme provides a safety net of last resort to help needy families to meet their basic needs. It is a non-contributory scheme. Applicants are subject to a test of their financial means to ensure that public resources are used on families with genuine needs.

44. Under the CSSA Scheme, successful applicants with disabilities are provided with higher payment rates than able-bodied applicants. As at the end of October 2013, there were about 262 000 CSSA cases. Amongst them, about 4 000 (1.5%) were classified as disability cases. Recipients of the CSSA Scheme are also entitled to free medical treatment at public hospitals or clinics in the HKSAR.

45. Persons with severe disability who do not receive CSSA may apply for the non-contributory, non-means-tested Disability Allowance (DA). There are two tiers of DA provided according to the level of assistance or attendance required by the applicant. As at the end of October 2013, the DA was benefitting about 123 000 persons with disabilities.

46. The Social Welfare Department is now operating about 40 Social Security Field Units to assist applicants of various schemes, including those with disabilities.

Article 10 – Protection of the family, mothers and children

Question 51: Please provide information on measures taken to counter the adverse impact of right of abode policies and to ensure that families are not separated between mainland China and Hong Kong, China, as a result of such policies

47. The HKSAR Government has been handling matters of right of abode and split families in accordance with the Basic Law, relevant local legislation and government policies.

48. Pursuant to Article 22 of the Basic Law, for entry into the HKSAR, people from other parts of China must apply for approval. Among them, the number of persons who enter the HKSAR for the purpose of settlement shall be determined by the competent authorities of the Central People's Government after consulting the government of the HKSAR. Mainland residents who wish to settle in the HKSAR must apply for One-way Permits (OWP) from the Exit and Entry Administration Offices of the Public Security Bureau of Mainland China at the places of their household registration. The OWP scheme allows Mainland residents to come to the HKSAR for family reunion in an orderly manner through approval by the Mainland authorities in accordance with the laws and regulations of Mainland China.

49. Apart from entering the HKSAR for settlement on the strength of the OWPs, eligible Mainland residents may also apply for Exit-Entry Permit (EEP) (commonly known as "Two-way Permit") and relevant exit endorsement from the Mainland authorities for visiting relatives in the HKSAR.

50. The application, approval and issue of OWP, EEP and exit endorsements fall within the jurisdiction of the Mainland authorities. The HKSAR Government has all along been exchanging views on the OWP policy with the Mainland authorities, and reflects to them the views of various sectors of society as appropriate. The Mainland authorities have from time to time adjusted and refined the OWP scheme. For example, the Mainland authorities in 2009 shortened the waiting time of applications from separated spouses from five years to four years; and starting from 25 December 2009, they issue "one-year multiple exit

endorsement for visiting relatives" to eligible Mainland residents. Further, in response to the request for "overage children"[1] in Mainland China to reunite with their parents in the HKSAR, starting from 1 April 2011, the Mainland authorities have allowed eligible "overage children" to apply for OWP in an orderly manner, utilising residual OWP quota.

51. Further, for individual cases with special family difficulties but are not eligible to apply for OWP, the Immigration Department would refer such cases to the Mainland authorities having regard to the requests of the applicants and circumstances of the cases. The Mainland authorities have been responding positively by exercising discretion and issuing OWP or one-year multiple endorsement for visiting relatives to the applicants in warranted cases.

Question 52: Please provide more detailed information on practical steps taken to prevent and combat trafficking in persons in Hong Kong, China, as a source, destination and transit point, and specify whether these efforts have also focused on abusive practices regarding foreign domestic workers

52. The HKSAR is neither a destination for human trafficking nor a place of origin or transit for such illicit activities. The existing legislation provides a solid framework underpinning our robust efforts to combat human trafficking. The trafficking-related acts are prohibited by various pieces of legislation such as the Crimes Ordinance (Cap. 200), the IO and Offences against the Person Ordinance (Cap. 212). The prescribed penalties range from a maximum of 10-year to life imprisonment. The HKSAR Government has all along spared no effort in cooperating closely with our overseas counterparts on intelligence exchange and the conduct of joint operations in the fight against human trafficking.

53. Notwithstanding the rare occurrence of human trafficking for sex exploitation in the HKSAR, five syndicates were smashed by the Hong Kong Police in the past three years and the offenders were sentenced to up to 30 months' imprisonment. The human trafficking case statistics from 2009 to Oct 2013 are tabled below:

	2009	*2010*	*2011*	*2012*	*2013 (Up to Oct)*
No. of trafficking cases	4	3	2	4	4

54. Every year, Police and Immigration officers proactively mount about 5 000 anti-vice operations with 3 000 to 6 000 prostitutes arrested on average. These two law enforcement agencies are on high alert for any potential victims of human trafficking in the course of their duties. They would endeavour to identify these victims for each operation at the vice-establishments and provide the victims with appropriate assistance including urgent intervention, legal aid, medical consultation and treatment, counselling, shelter or temporary accommodation, and other support services. Immigration officers would also grant the victims extension of stay as a visitor in the HKSAR or defer their repatriation to their place of domicile for assisting investigations and facilitating their legal proceedings. Each case will be considered on its merits.

55. The "Action Card" for "Debriefing of Human Trafficking Victims" has been widely distributed to frontline officers as a checklist / guideline for the Police and Immigration officers to identify potential human trafficking victims.

[1] Before 1 November 2001, under the relevant rules, eligible Mainland children of HKSAR residents aged below 14 may apply for OWP to come to the HKSAR. However, approval would not be granted to those who attained the age of 14 while awaiting approval by Mainland authorities. The term "overage children" refers to these persons who turned 14 while awaiting approval.

56. Regular internal training / seminars are held to update frontline law enforcement officers with the latest trend of human trafficking, including the skills in victim identification. Our officers have also maintained close liaison with local Consulates and non-governmental organizations for rendering relevant supporting services, including the protection of trafficking victims.

57. Furthermore, taking into account the latest developments of international trends about human trafficking, the Prosecution Code issued by the Department of Justice in September 2013 includes a new section on "Human Exploitation Cases". It provides useful guidelines to prosecutors in the identification of human exploitation cases as well as broad principles regarding their handling having regard to international standards and practices concerning victims of human trafficking in order to promote fair, just and consistent decision-making at all stages of the prosecution process in these cases.

Labour rights for FDHs

58. The HKSAR Government attaches great importance to protecting the rights of FDHs in the HKSAR. As at end November 2013, there were about 320 600 FDHs in the HKSAR. About 51.4% (164 700) were from the Philippines, 46.4% (148 700) from Indonesia and 0.9% (2 700) from Thailand. The rest came from India, Nepal, Sri Lanka and Pakistan, etc.

Statutory protection

59. FDHs are entitled to equal and full statutory rights and benefits as local workers under the EO. These include wage payment, rest days, paid holidays, maternity protection, long service payment, compensation for work-related injuries/death, rights to form and join unions, etc.

60. If FDHs consider that their rights have been infringed, they can seek redress through the courts and apply for legal aid according to statutory criteria. FDHs are also protected from discrimination on the ground of race, religion and sex under the HKBORO and the anti-discrimination legislation. They also have free access to the conciliation and consultation services provided by the LD.

Contractual protection

61. Apart from the statutory protection, FDHs are further protected by a Standard Employment Contract prescribed by the HKSAR Government specifically for FDHs. The Standard Employment Contract is a mandatory contract for employment of FDHs to protect them from being exploited, by providing that employers must pay their FDHs a wage level not lower than the MAW, and must provide them with free accommodation with reasonable privacy, free food (or food allowance), free medical treatment, as well as free passages to/from their places of domicile, etc.

62. The prevailing MAW is HK$4,010 per month and is applicable to all contracts signed on or after 1 October 2013. Any employer who pays FDHs wages less than the contractual amount commits the offence of underpayment of wages under the EO which is punishable by a fine of HK$350,000 and three years' imprisonment upon conviction.

Enforcement and prosecution

63. The HKSAR Government does not and will not tolerate any abuse of FDHs, or any illegal acts of employers or employment agencies (EAs). The LD takes rigorous enforcement action against employers who contravene the EO, and would not hesitate in suppressing any illegal practices of EAs (e.g. overcharging of commission). Any such complaints will be promptly investigated. Prosecution will be instituted if the FDH concerned is willing to act as prosecution witness and there is sufficient evidence.

64. Although there are reports that some FDHs, before arrival in the HKSAR, have incurred huge debts due to the high level of fees and commissions charged by the EAs or recruiters in their home countries, the HKSAR has no extra-territorial jurisdiction over operations and malpractices in these countries. Nevertheless, we have been proactively bringing the matter to the attention of relevant Consulates General in the HKSAR and their senior officials and urged them to draw the problem to the attention of their respective governments for follow-up action.

Promotion of FDHs' rights and benefits

65. LD runs many promotional and educational activities to ensure that FDHs and their employers are aware of their rights and obligations under the EO and the Standard Employment Contract. These include publishing various guidebook/leaflets (some of which are available in Tagalog, Indonesian and Thai in addition to Chinese/English) and distribute them for free to the relevant parties. These publications are also available online.

66. Radio APIs are broadcast, and publicity videos on rights and obligations of FDHs and their employers are screened at visa-issuing offices of the Immigration Department and on public transport (e.g. buses and trains). We also distribute copies of the publicity video to FDHs, their employers and EAs for free.

67. In addition, LD stages seminars and exhibitions on EO from time to time, and distributes the relevant publications through NGOs so as to keep them engaged and enhance their understanding of the employment terms and relevant laws. LD also regularly stages information kiosks at FDHs' popular gathering places, in which publicity video are screened and information packs are distributed in order to reach out to the FDH community to raise awareness of their labour rights and the channels for seeking redress.

Question 53: Please inform the Committee whether legislative amendments will be introduced with a view to prohibiting corporal punishment in all settings. Please also provide information on steps taken, other than legislative, to prevent the use of corporal punishment in the home and alternative care settings

68. There are laws in place to protect children from physical abuse. Pursuant to the Offences Against the Person Ordinance, it is unlawful for a person aged over 16, including a parent, who has the custody, charge or care of a child or young person under the age of 16, to wilfully assault or ill-treat the child or young person, or causes such child or young person to be assaulted or ill-treated in a manner likely to cause such child or young person unnecessary suffering or injury to his health. If convicted, the person shall be liable to a maximum penalty of 10 years' imprisonment.

69. The Social Welfare Department (SWD) launches the "Strengthening Families and Combating Violence" publicity campaign every year to organise territory-wide and district-based publicity and public education programmes to arouse public awareness of the importance of family solidarity, prevention of child abuse and domestic violence as well as to encourage people in need to seek help. SWD also operates a Family Life Education Resource Centre which provides a variety of multi-media resource materials to all related departmental units and social service agencies providing family education services with a view to promoting family functioning, strengthening family relationship and preventing family breakdown.

70. We have been closely monitoring the problem of child abuse and the handling of child abuse cases by law enforcement and welfare agencies. We will continue to assist parents to hone their parenting skills through different means so that children will grow up in a caring and nurturing environment.

Article 11 – The right to an adequate standard of living

Question 54: Please clarify how the Hong Kong, China, authorities ensure that the level of the Comprehensive Social Security Assistance is an accurate measure of the minimum standard of living. Please also clarify whether a comprehensive policy and plan is in place to combat poverty, including an official poverty line, adjusted annually for inflation

71. CSSA recipients are provided with standard payment rates so that they can meet their basic needs. The rates are annually adjusted according to the movement of the Social Security Assistance Index of Prices.

72. Apart from standard payment rates, the CSSA Scheme also provides supplements and special grants to meet the needs of special groups such as families having a member who is old, disabled or a single parent. These supplements and special grants are also adjusted annually according to price indices or based on actual expenses incurred.

73. As a matter of fact, when the average monthly CSSA payments are compared with the average monthly expenditure of non-CSSA households in the lowest 25% expenditure group in the HKSAR, it is found that the former is higher than the latter in all household sizes.

74. The first official Poverty Line of the HKSAR and the Hong Kong Poverty Situation Report 2012 were announced at the Commission on Poverty Summit held in September 2013.

75. The Poverty Line enhances understanding of the poverty situation, guides policy formulation, and monitors policy effectiveness. In line with international practices, the Poverty Line of the HKSAR is established with reference to the monthly household income before tax and social benefits transfers. The HKSAR Government will update the Poverty Line and Poverty Situation Report annually according to the household income in the HKSAR.

76. At the Commission on Poverty Summit in September 2013, the HKSAR Government indicated that policies and measures will be put in place to provide targeted assistance to needy groups as revealed by the Poverty Line. With reference to the analysis of the poverty situation in 2012, the HKSAR Government's key strategy to alleviate poverty is to provide incentives to those who can work to improve their well-being through sustained employment, and to enhance the upward mobility of the younger generation in poor households.

77. In January 2014, the Policy Address of the Chief Executive announced a comprehensive list of poverty alleviation initiatives, which cover a wide range of areas benefiting various groups and form a blueprint for poverty alleviation. These initiatives include the Low-income Working Family Allowance, with the objectives of:

(a) Relieving the financial burden of non-CSSA low-income working households;

(b) Encouraging working members to stay in active employment to promote self-reliance and preventing these low-income working households from falling into the CSSA net; and

(c) Helping alleviate inter-generational poverty and promote upward social mobility in the long run.

Question 55: Please provide information on steps taken to introduce rental subsidies for those in need. Please provide information on how rent levels are protected against real estate speculation, in view of the lifting of rent control through the amendments to the Landlord and Tenant (Consolidation) Ordinance. Please also clarify the housing situation for asylum seekers and refugees

78. The housing subsidies for low income people in the HKSAR take the form of public rental housing (PRH). The rental levels for PRH flats are set at a very affordable level. The average monthly rent as at end September 2013 is about HK$1,540 per flat.

79. As at end September 2013, there were about 2.42 million households in the HKSAR, among which 736 800 (30%) households live in PRH.

80. The HKSAR Government's objective is to provide PRH to low-income families who cannot afford private rental accommodation, and the target is to maintain the average waiting time at about three years for general applicants on the Waiting List (WL).

81. In view of the number of applicants on the WL, we will produce about 79 000 new PRH flats for the five-year period from 2012/13 to 2016/17; and for the next five-year period from 2017/18 to 2021/22, we have identified sufficient land to produce about 100 000 new PRH flats.

82. The HKSAR Government has been closely monitoring the private residential property market, and has introduced measures to ensure its healthy and stable development. For instance, in view of the exuberance in the property market, the HKSAR Government announced an enhancement to the Special Stamp Duty and the introduction of Buyer's Stamp Duty in October 2012, in order to address the overheated property market, reduce the risk of a property bubble, and maintain the stability of the macro economy and the financial sector.

83. The HKSAR Government currently has no plan to introduce rent control. As rent control mainly targets at tenancy renewal and the control of the rent levels, this may in turn discourage landlords from renting out their premises, thereby reducing the housing supply. There is also a prospect that landlords may even try to increase the rent upfront as much as possible when negotiating tenancy agreements in order to minimize the impact arising from rental control upon renewals. The HKSAR Government is concerned that such developments will work particularly to the disadvantage of those with imminent housing needs, in particular home-seekers who are socially disadvantaged.

84. As rent levels are a reflection of property price, the HKSAR Government considers that the best way is to tackle the problem at source by increasing housing supply, in particular the supply of PRH flats; as well as cooling down the overheated property market. The HKSAR Government will continue to closely monitor the situation and suitable measures would be introduced as appropriate.

85. On humanitarian grounds, the SWD has commissioned the International Social Service Hong Kong Branch (ISS) to provide in-kind assistance including accommodation to non-refoulement claimants since 2006. Persons who have lodged an asylum claim with the UNHCR Sub-Office at HKSAR and mandated refugees may receive such assistance.

86. On accommodation assistance, non-refoulement claimants, asylum seekers and refugees in genuine need are provided with temporary accommodation supplied with electricity, water and other basic utilities. The types of accommodation assistance offered include:

(a) Private flats rented by ISS. The flats are equipped with basic furniture, beddings, household utensils and cooking facilities;

(b) Accommodation self-arranged by the non-refoulement claimants, asylum seekers and refugees. ISS will arrange direct payment to the landlord. The tenancy agreement will be renewed on a monthly basis; and

(c) ISS's Anthony Lawrence International Refuge for Newcomers to Hong Kong. Non-refoulement claimants, asylum seekers and refugees in need of supervised housing, including women or minors, are arranged to stay in this shelter.

Article 12 – The right to physical and mental health

Question 56: Please clarify whether the Hong Kong, China, authorities will introduce the Mental Health Policy as recommended by the Equal Opportunities Commission and civil society

87. The HKSAR Government attaches great importance to the mental well-being of the public. It has been our established policy to promote mental health and prevent mental problems, while providing quality, affordable and accessible mental health services to persons with mental illness.

88. In keeping with the pyramid framework recommended by the World Health Organization for organizing mental health services[2], we have been adopting an integrated approach in the promotion of mental health through a service delivery model that covers prevention, early identification, timely intervention and treatment, and rehabilitation for persons in need. From promoting self-care and primary/community care to offering specialist care and varying degrees of institutionalization, we seek to provide comprehensive, multi-disciplinary and cross-sectoral services to persons with mental health problems through a number of policy bureaux and departments, and in partnership with the Hospital Authority, non-governmental organizations and other stakeholders in the community. In line with the international trend to gradually focus more on community and ambulatory services in the treatment of mental illness, we have also introduced various initiatives to enhance community support for mental patients with a view to facilitating their recovery and re-integration into the community.

Question 57: Please provide information on the reportedly high number of rejections of persons with disabilities by health insurance companies

89. Insurance companies in the HKSAR are private enterprises that operate on commercial principles, under the supervision of the Insurance Authority in accordance with the regulatory regime for the insurance industry in the HKSAR. That said, the Insurance Authority has no authority over insurance companies' decisions as to whether an individual insurance policy should be accepted or rejected and on what terms, regardless of whether the applicant is a disabled person. Such decisions are commercial decisions entirely for the insurance companies to make. The Insurance Authority understands that insurance companies take into account various factors in making such decisions and the applicant being disabled may be only one among many factors. There is thus far no evidence indicating that disabled persons are systemically rejected in their applications for insurance policies.

[2] WHO, *The Optimal Mix of Services for Mental Health*. (Mental Health Policy, Planning and Service Development Information Sheet), Geneva, 2007.

Articles 13 and 14 – The right to education

Question 58: Please provide information on steps taken to ensure that all school-age children of migrants without the legal right to remain in Hong Kong, China, and who are unlikely to be removed in the short term, as well as children of ethnic minorities, have unconditional access to public school education

90. All school-age children of migrants without the legal right to remain in the HKSAR, and who are unlikely to be removed in the short term may apply to the Education Bureau (EDB) for schooling. After consulting the Director of Immigration, the EDB will, depending on case details (e.g. whether there are enough school places for placement, duration of schooling required, age and educational background of the minors, etc.), arrange them to attend primary schools, secondary schools, or to a six-month full-time Initiation Programme designed for newly arrived children.

91. The HKSAR Government ensures equal opportunities for non-Chinese speaking (NCS) students[3], notably ethnic minority students, in school admission, learning and further study pursuits. We revamped the Primary One Admission System in 2005 for NCS parents to choose public-sector schools in a manner similar to their local counterparts. Besides, to cater for the emotions and adaptation of some NCS students, NCS parents may also choose the eight primary schools traditionally admitting more NCS students even if they are located in other school nets.

Question 59: Please provide information on steps taken to address the high dropout rate in secondary schools. Please also provide information on progress made in the implementation of the "Chinese as a Second Language" curriculum

92. As stipulated under sections 74 and 78 of the Education Ordinance (Cap. 279), parents have a legal responsibility to ensure that their children within the ages of 6 to 15 attend schools regularly. For student dropouts aged below 15, Student Guidance Officer / Student Guidance Teacher / Student Guidance Personnel / School Social Worker will provide intervention service including counselling, upon receiving reports of students being absent from school. When counselling is not effective in bringing these students back to school, administrative procedures, such as the issue of a warning letter / attendance order under section 74 of the Education Ordinance would be considered. For student dropouts aged 15 or above, the EDB will try to place them back to the school last attended or other schools, depending on circumstances such as parental choice, suitability and availability of school places. With the consent of the parents concerned, the EDB may also refer these student dropouts to short-term programmes with social development content run by NGOs to prepare them for resumption of normal schooling.

93. From the 2014/15 school year, the HKSAR Government will provide a "Chinese Language Curriculum Second Language Learning Framework" for NCS primary and secondary students with supporting learning and teaching materials to facilitate their effective learning of Chinese as a second language with a view to enabling them to bridge over to mainstream Chinese language classes. Other support services for NCS students to learn Chinese language are set out in the annex.

[3] For the planning of education support measures, students whose spoken language at home is not Chinese are broadly categorised as NCS students.

Annex

Highlights of measures to support ethnic minorities (EMs) by the HKSAR Government

Education

1. From the 2014/15 school year, the EDB will provide the "Chinese Language Curriculum Second Language Learning Framework" with supporting learning and teaching materials, and increase funding support to schools to implement the new framework.

2. Provide an Applied Learning (Chinese Language) subject to be pegged at the Qualifications Framework at senior secondary level.

3. Launch the Professional Enhancement Grant Scheme to enhance Chinese teachers' professional capability in teaching Chinese as a second language.

4. Encourage parents of NCS students to let their children start learning Chinese at the pre-primary stage through district-based projects/programmes.

Employment

5. Implement measures to ensure that EMs have equal access to job opportunities in the Government, such as reviewing and adjusting the Chinese language proficiency requirements and recruitment formats.

6. The recruitment test for Police Constables has been modified to require candidates to write English in addition to Chinese for situations simulating police operations, and to award extra marks for possessing foreign/ethnic language skills.

7. LD will continue to canvass suitable vacancies for EMs and organizes job fairs to help EMs secure employment.

8. The Construction Industry Council has promotional activities and collaborates with the construction industry to stage job fairs to attract new EM entrants, and attracts in-service EM construction workers to attend training courses to enhance skills.

Community outreach

9. Set up a new support service centre for EMs in Kwai Tsing.

10. Set up youth units in all EM support service centres and sub-centres to provide dedicated programmes such as sports and cultural activities to help the personal development of EM youths.

Health

11. Interpretation services for EM patients are provided in 17 languages in public hospitals and clinics under the Hospital Authority.

Public Education

12. Co-operate with Radio Television Hong Kong to produce a TV documentary series and conduct a school outreach programme to help the public understand the cultures and customs of EMs.

13. Set up an EM Taskforce under the EOC to promote anti-discrimination.